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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1942.

AINTREE CORPORATION,
a Corporation,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 702

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals
for the Seventh Circuit

and

BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Seventh Circuit

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Now comes Aintree Corporation, a corporation, petitioner, and respectfully petitions this Honorable Court to grant a Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit, and to remove therefrom to this Court, for review, the record in the case lately pending in said Circuit Court of Appeals styled "National Labor Relations Board, Petitioner, v. Aintree Corporation, Respondent," being Cause No. 8028 on the docket of said Circuit Court of Appeals.

The duly certified record, including all of the proceedings here material, had before National Labor Relations Board where said cause originated, and in the said Circuit Court of Appeals, wherein the Board filed its petition for the enforcement of an order made by it against this petitioner, is filed herewith under separate cover.*

QUESTIONS PRESENTED.

1. (A) Is an employer required under the National Labor Relations Act to "restrain" foremen and foreladies from attending union meetings where such attendance is not found to have been other than of their own volition, and constitutes their sole union activities, and is the employer's failure to so "restrain" them an unfair labor practice?

(B) Does a finding by the Board that such employees "* * * continued unchecked to attend (union) meetings * * *" permit a finding and conclusion that they "continued thereby to throw the (employer's) support to that organization"?

2. May the Board make a blanket injunctive order against an employer which has no anti-union history, its president is found by the Board to have been neutral as to the organizations involved and to have ordered the discharge of supervisors engaging in union interference, and where the only findings of unfair labor practices are that: the employer did not "restrain" supervisory employees from attending union meetings; a supervisory employee, whose employment has been terminated, made anti-union

*The printed record in the Court below consisted of an appendix to the Board's brief which was designated as "Appendix to Petitioner's Brief," and an appendix to the brief of this petitioner (respondent in the Court below), which was designated as "Appendix to Respondent's Brief." The printed record in this Court consists of such appendices and the record of the Appellate proceedings below printed under the supervision of the Clerk of this Court. In this petition and petitioner's supporting brief, the said Appendix to the Board's brief will be referred to as B. A., the said Appendix to this Petitioner's brief as R. A., and the said printed record of Appellate proceedings as A. P.

remarks; another supervisory employee expressed an unfavorable opinion of unions; and one of two employees discharged was a member of an affiliated union and her discharge was due to her union affiliation and was discriminatory?

3. May the Board require an employer to post notices which state that its employees are free to become or remain members of a specifically designated organization and that the employer will not discriminate against any employee because of membership or activity "in that organization," but which fail to state and inform the employees that they are free to join or organize any union they choose without being limited to such designated organization?

4. Are the Board's findings that Petitioner engaged in unfair labor practices supported by substantial evidence?

5. Does the record support the Board's order against this Petitioner?

JURISDICTION.

1. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 938 [28 U. S. C. A. 347 (a)], and Section 10 (e) of the National Labor Relations Act, 49 Stat. 454 [29 U. S. C. A. 160 (e)].

2. The opinion of said Circuit Court of Appeals was rendered in said cause on November 12, 1942 (A. P. 321), and on the same day the said Court ordered that the petition of the National Labor Relations Board for Enforcement of the Board's order against this petitioner be granted (A. P. 333). Petitioner's petition for rehearing was duly filed on November 27, 1942 (A. P. 333), and was denied on December 4, 1942 (A. P. 336). On December 4, 1942, the said Circuit Court of Appeals entered its Decree

in said cause (A. P. 336). This petition is here presented on the ..... day of ....., 1943.

3. The following decisions sustain the jurisdiction of this Court to review the said decision and decree of the said Circuit Court of Appeals for the reasons set out herein and in the specifications of error in the supporting brief annexed hereto:

Consolidated Edison Company of New York, Inc., et al. v. National Labor Relations Board, 305 U. S. 197;

National Labor Relations Board v. Columbian Enameling & Stamping Company, Inc., 306 U. S. 292;

National Labor Relations Board v. Sands Manufacturing Company, 306 U. S. 332;

National Labor Relations Board v. Express Publishing Company, 312 U. S. 426;

National Labor Relations Board v. Virginia Electric & Power Co., 314 U. S. 469.

SUMMARY STATEMENT OF MATTER INVOLVED

After complaint, answer, and hearing in a proceeding instituted by the Board upon charges filed by International Ladies' Garment Workers' Union, Local No. 373, affiliated with American Federation of Labor (hereinafter called "International"), the Board found that petitioner had engaged and is engaging in unfair labor practices as defined by Section 8, subsections (1), (2) and (3), of the National Labor Relations Act (B. A. 345-369). The Board ordered that the petitioner cease and desist from such alleged unfair labor practices and from **"in any other manner interfering with, restraining or coercing its employees"** in the exercise of their rights as guaranteed in Section 7 of the Act, and that the petitioner refrain from recognizing The Better Union, and offer reinstatement to employee Mina Hale with compensation for loss of wages

from December 4, 1940 (B. A. 370-371). (Emphasis ours.) The Board further ordered that petitioner post notices stating that it will not engage in the conduct from which it was ordered to cease and desist, that petitioner will take the affirmative action directed in said Order and that petitioner's employees "are free to become or remain members of **International Ladies' Garment Workers' Union, Local No. 373, affiliated with the American Federation of Labor,** and that the (petitioner) will not discriminate against any employee because of membership or activity in **that** organization" (B. A. 371). (Emphasis ours.)

Upon the Board's petition for enforcement (B. A. 1-4),* the Court below, with Circuit Judge Major dissenting (A. P. 327-332), decided (A. P. 321-327) that the Board's petition for enforcement should be granted, and thereafter entered its order (B. A. 333) and its decree for the enforcement of the Board's aforesaid Order (B. A. 336).

In his dissenting opinion Circuit Judge Major held that, "It is such decisions as this which are calculated to bring the National Labor Relations Act into disrepute" (A. P. 332).

From the Board's findings, and the uncontradicted evidence, the following appears:

Petitioner is an Illinois corporation. It has its principal office and a plant at Fairfield, Illinois, and is there engaged in the manufacture of men's underwear (B. A. 345). When requested so to do petitioner has bargained collectively with its employees (R. A. 138).** The Board found that

*To such petition this petitioner duly filed an answer (R. A. 1-10) contending that the Board's findings of unfair labor practices are not supported by substantial evidence and that the Board's Order is not valid or proper under the Act.

**"There is not a scintilla of evidence of any anti-union history—that (petitioner) has ever fostered company unions, broken strikes, been guilty of espionage or of any character of hostility against or favoritism toward any union or member thereof" (dissenting opinion of Circuit Judge Major, A. P. 327). Neither the Board nor the majority opinion of the Court below found otherwise.

petitioner's president was neutral as to the organizations here involved (B. A. 364), and had ordered that any supervisory employee engaging in union interference should be discharged (B. A. 362).

The Better Union is an unaffiliated labor organization which admits to membership all employees of petitioner (B. A. 345). It was organized on December 27, 1940 (B. A. 347), pursuant to a discussion had and action taken by employees at a party given by them at the home of employee Otis Turner on December 19, 1940 (B. A. 175-176, 197, 198; R. A. 39, 40, 46, 52, 53, 106), and with the assistance and counsel of an attorney retained upon their instructions by one of the employees at the party and to whom they had referred the matter of consulting counsel (B. A. 62, 197, 198, 205, 206-209, 210, 213-214, 215, 216, 220-221; R. A. 52-53).

The petitioner has about 250 employees (B. A. 345) and 180 of them are members of The Better Union (R. A. 158-159).† The petitioner consulted the regional office of National Labor Relations Board respecting a request by The Better Union for recognition (B. A. 250-252). On January 13, 1941, The Better Union petitioned the Board that it be certified as the bargaining representative of petitioner's employees (R. A. 100). There is no evidence or claim that petitioner recognized or bargained collectively with The Better Union.

No meetings of The Better Union were held on the petitioner's property (B. A. 76, R. A. 37, 49, 176), or on petitioner's time (R. A. 176). There is no evidence or finding that there was any solicitation of members of The Better Union in petitioner's plant or on petitioner's time or that the petitioner or any of its supervisory employees ever solicited or requested any employee to form or join any

†The details of the formation of The Better Union are set forth in the dissenting opinion of Circuit Judge Major, and, for the convenience of this Court, such opinion is printed as an appendix to petitioner's supporting brief.

organization. The Board stipulated that if called as witnesses all of the members of The Better Union would testify that they had never been told by any officer or supervisory employee of petitioner to join The Better Union (R. A. 158-159).

Mr. Irving Flamberg is petitioner's president. He resides in New York and comes to Fairfield for about one or two days a month (B. A. 248). Mr. T. O. Leary came to Fairfield as the petitioner's plant manager in July, 1940 (B. A. 19). Carrie Schumacher, Emma Shehorn, Perry Musgrave and Fay Humphrey are supervisory employees (B. A. 364). Jesse R. Baker was in petitioner's employ as a supervisory employee, but his employment was terminated in March, 1941 (B. A. 28-29). Plant Manager Leary was the only employee having authority to hire, fire or lay off employees (R. A. 19-20).

Carrie Schumacher, Emma Shehorn, Perry Musgrave and Fay Humphrey were among those who attended the first meeting of The Better Union* and they also attended some of its subsequent meetings. There was no finding or evidence that their attendance at such meetings was other than of their own volition or that they engaged in any union activity other than the attending of union meetings. Schumacher testified that her attendance at union meetings was her own idea and "was (her) privilege" (R. A. 176).

The Board found that petitioner failed to "restrain" Schumacher, Shehorn, Perry Musgrave and Humphrey from attending such meetings (B. A. 366), and that they continued "unchecked" to attend meetings of The Better Union "and continued thereby to throw (this petitioner's) support to that organization" (B. A. 363). The Court below sustained such finding and conclusion (A. P. 324-326).

*Carrie Schumacher and Emma Shehorn had previously attended a meeting of the International and had been well received at such meeting (B. A. 236-237; R. A. 177).

When Leary came to the plant as manager in July, 1940, he called a meeting of all employees, introduced himself, and, among other things, informed them that the plant had been and was losing money and that unless production was increased and losses stopped, the company would be compelled to close the plant (R. A. 93-94). At that meeting he also told the employees that he intended to make some changes, that he was in sole charge and that no one other than he would have authority to hire, fire or lay off employees (R. A. 19-20, 93-94).

Thereafter, on about September 15, 1940, International Ladies' Garment Workers' Union undertook the organization of petitioner's employees (B. A. 345), and distributed literature inviting "all workers" or "employees" of petitioner to attend (Bd.'s Ex. 4, B. A. 40, 311, 312, R. A. 22). Its first meeting was held in October, 1940, and supervisory employees Carrie Schumacher and Emma Shehorn were among the employees who attended (B. A. 236-237; R. A. 177). Said union "treated (them) nice and didn't make any difference between (them) and any of the employees that were there" (R. A. 177; B. A. 237-238, 255). At such meeting a number of employees indicated their desire to join said union (R. A. 178-180; B. A. 238). None of them have been laid off or discharged and some of them are among the employees who were at a later date assigned to the most desirable and profitable work in the plant (R. A. 24-25, 178-180). On October 22, 1940, said union granted a charter to International (B. A. 346).

In November, 1940, International published a bulletin stating the names of the nine employees who had been elected as officers and board members. There is no claim or evidence that any of such officers or board members have been laid off, discharged or in any way discriminated against. Some of them have been placed at the most desirable and profitable work (R. A. 24, 28). When petitioner discontinued the department in which some of Interna-

tional's officers and active members were employed, petitioner did not lay them off, but found new and more profitable work for them in another department (R. A. 25, 27, 31-32).

On December 10, 1940, the petitioner's president, Mr. Flamberg, and Manager Leary met in a conference with the International's organizer and its president and secretary (B. A. 105, 110, 114, 172). (There is no claim that the International ever represented a majority of petitioner's employees.) In such conference Mr. Flamberg told the International representatives that petitioner would recognize and bargain with the International or with any organization selected by a majority of the employees, that he had no choice in the matter at all, and "was not fighting unions" (B. A. 116). The International secretary, Board witness Kittel, testified that at the conference Mr. Flamberg and Manager Leary made very clear that the Company intended to abide by the law in every respect (R. A. 72), and that no discrimination against any employee on account of union membership would be tolerated (R. A. 75) and that International representatives were requested by Mr. Flamberg and Manager Leary to call to Leary's personal attention anything which they might feel was a discrimination against any of their members (R. A. 75-76). In response to a request by the International organizer, Mr. Flamberg consented that International might publish a statement setting forth the Company's attitude and quoting Mr. Flamberg's statements as above set forth (B. A. 116).

As the International continued with its organizational efforts it encountered opposition on the part of a considerable number of petitioner's employees (B. A. 129, 190-191, 206-209, 212, 223-227; R. A. 101-102, 108, 111, 118, 123, 124, 126-127, 128, 131, 134, 135, 136, 137, 138, 142, 143-145, 157-158, 194, 199).

A few days after the December 10, 1940, conference be-

tween International representatives and Mr. Flamberg and Manager Leary, the International published and distributed among all of the employees (B. A. 116, 122) a circular (R's Ex. 3, R. A. 216-218, 245) incorporating a report of such conference and setting forth in great detail the assurances and statements made by Mr. Flamberg and Manager Leary in such conference as aforesaid. Said circular carried the headline "Flamberg Promises to Deal With Union Majority," and, among other things, set forth that Mr. Flamberg had declared his willingness "to deal with the Union" whenever a majority was reached and that he had pledged that no worker would be discriminated against for Union membership.

By December 17, 1940, there had developed considerable bitterness between members and nonmembers of the International (R. A. 122-123). On the night of December 17, 1940, the International gave a Christmas party for its members (B. A. 190, 192) and employees who were not members were not invited (B. A. 182). Thereupon, on the night of December 19, 1940, a number of employees who were not members of International gave a pound party at the home of employees Pearl Turner and her husband, Otis Turner (B. A. 190, 191), and members of International were not invited (B. A. 182). The idea of giving the pound party originated with Pearl Turner and a number of her fellow workers (B. A. 190). Pearl Turner testified that they gave the pound party because "we were spatting backwards and forwards and we did it more to outsmart the other side, * * *" (B. A. 191). There were about 70 persons at the pound party (B. A. 175), of whom about 40 or 45 were employees at the plant (B. R. 175-176). Perry Musgrave was invited by Otis Turner and attended the pound party (R. A. 104). Musgrave and Turner had been friends and associated with each other over a number of years (R. A. 104, 119, 120; B. A. 193-194). In the course of the party employees Harri-

son and Cross started a discussion about the union question (R. A. 39-40, 106). Some of the employees stated that if they needed a Union they preferred to have one of their own (R. A. 46) and most of them were in favor of organizing a union (R. A. 52). None of the group knew how to proceed towards forming a union and they delegated employee Clem Anthis to seek counsel as to the procedure for forming an organization (R. A. 52-53, 106, 111; B. A. 62, 197, 198). Perry Musgrave was not in the group which was discussing the union question (R. A. 110, B. A. 62).

Thereafter, on the night of December 26, 1940, Anthis obtained permission from the City Council to hold a meeting at the City Hall on the following night (B. A. 218). Anthis called at the office of Attorney Brown and steps were taken to form an independent organization (B. A. 209, 210, 220-221). On the evening of December 27, 1940, a public meeting was held at the City Hall and about 100 employees attended (B. A. 63, 192). Anthis opened the meeting and Attorney Brown made a talk and read a proposed constitution and by-laws for The Better Union (B. A. 192, 198). Various speakers addressed the meeting and told the employees they had the right to join or refrain from joining the International, The Better Union or any organization (R. A. 51). Between 90 and 96 employees joined The Better Union and signed the Constitution and by-laws at such meeting.

On January 2, 1941, a Fairfield newspaper published an article which inferred that the Company was hostile to an outside union (B. A. 329).* (On January 3, 1941, The Better Union already had a majority membership [R's Ex. 17, B. A. 249, 323].) Manager Leary sent the clipping to Mr. Flamberg in New York, and a few days later Mr. Flamberg sent such newspaper a letter (R's Ex. 7, B. A. 187, 320), wherein he demanded a retraction and requested that the

*The Board found that responsibility for said article is not chargeable to the petitioner (B. A. 364, footnote 13).

newspaper publish his letter and also a notice which was being posted on the plant's bulletin board. The newspaper published a retraction and a copy of such notice (B. A. 187; R's Ex. 12, R. A. 234).

Said notice, which was posted on the plant's bulletin board (R's Ex. 8, B. A. 187, 321), informed the employees, among other things, that the Company had no interest in the success or failure of either of the two unions other than the normal interest in the gaining of whatever representation or other advantages they may wish rightfully for themselves. On January 15, 1941, the petitioner posted a further notice on its bulletin board (B. A. 187; R's Ex. 9, B. A. 322) stating that the Company has been and will continue to be neutral and has no connection with any of the organizations involved in the controversy and warning that any employee, including foremen and foreladies, found guilty of making statements purporting to reflect the Company's opinion and policies would be instantly discharged.

Board witness Kittel testified that during the period in question he observed Anthis in the manager's office more frequently than usual; that Anthis would be absent from the building in which he worked and that he had seen Anthis in the office, sitting on Leary's desk smoking cigarettes (B. A. 357-358). Anthis is paralyzed and moves on crutches (R. A. 70, 157). Frequently, while in the office on business, employees smoke cigarettes (R. A. 74-75). Leary's desk is flat top and often times persons while in the office talking to Leary sit on the desk (R. A. 156-157, 201-202). Leary and Anthis testified that the duties of Anthis as stamp boy and filling out work tickets required his frequent coming to the office (R. A. 141, 156, 199).

On November 19, 1940, Baker stopped at the machine of Arline Potts, the recording secretary of the International, and showing her an International bulletin, said, "I have an invitation from the Union to come to their meeting tonight" (B. A. 41). Potts had known Baker for

a long time, he was a friendly person and was friendly toward her and at various times would stop and chat with her and with other employees at their machines (R. A. 22-23). In such conversation Baker told Potts that all of the officers selected by International were all right with the exception of Willene Shaw (B. A. 41). As to Willene Shaw, Baker said only that "she was a rotten operator and hadn't made the Code,* and if she didn't make it in the next two weeks she would be fired"** (B. A. 41). Baker also said that employee Lorene Turner (wife of the International sergeant-at-arms) talked too much at work and didn't try (R. A. 24) and that if Lorene Turner would talk less and work harder she could earn more (R. A. 23, B. A. 41). Baker told Potts, "Personally, I am not for the Union" (B. A. 41, and made other statements as to his views concerning unions and his own experience as a union member (B. A. 41-42). Potts testified that Baker also said the Company was losing a lot of money, that the employees were not working hard and that "if the Company kept losing money they would be compelled to close on account of the Union" (B. A. 42). Potts admitted that she understood that Baker was expressing his personal views and that he had not said that those were the views of the Company (R. A. 23, 28). Employee Goldie Manlove testified to the effect that in a conversation with her Baker had spoken in uncomplimentary terms about unions (R. A. 29). Manlove subsequently became a member of the International (B. A. 54). She, too, has since been promoted to more desirable and profitable work (R. A. 24-25).

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*Petitioner's employees are, generally, paid on a piece-rate basis. All are subject to the provisions of the Fair Labor Standards Act. When an employee on a piece-rate basis fails to earn the minimum wage (generally referred to as the "Code") at the rate provided, the difference is "make-up" paid by petitioner (B. A. 349).

**Willene Shaw (president of International) testified that Baker criticised her failure to earn the "Code" and warned her that she would have to earn the Code during the following two weeks, and that following such warning she continued to have "make-up" (R. A. 93; B. A. 166-167). However, Shaw was not laid off or discharged.

Jewell Elliott testified that about October 15, 1940, Baker came up to her machine where she was talking with two other employees (B. A. 57). He explained to her that under the law the Company could not permit employees to engage in union activities at the plant and that if the Company did permit such activities in the plant the Company would be taken before the Labor Board (R. A. 32);† that she told Baker she had not been talking about the union (R. A. 32-33), and that the incident then ended. Elliott testified that at about that time Baker told her that Manager Leary had instructed him not to discuss or have anything to do with the Union question and that the Company would not stand for him taking any part in the matter (R. A. 33). Elliott and Baker were on very cordial terms and had a high regard for each other (R. A. 29-30). When the department in which Elliott worked was discontinued the petitioner gave her more profitable work in another department (R. A. 31-32).

Elliott testified that she and Emma Sheehorn were and are good friends (B. A. 56-57, R. A. 31); that during the lunch hour one day in October, 1940, she went up to where Sheehorn was sitting (R. A. 30-31, B. A. 56); that some of the girls walked up and someone asked Elliott if she was for the Union; Elliott said that she was, and Shehorn asked her why; Elliott replied that her father had always belonged, and Shehorn said, "I think it is all hooey and ought to be stopped," and that "that is all (Shehorn) said" (B. A. 56-57). Elliott further testified that, since they are good friends, she was not afraid of Shehorn knowing that she was for the Union, that Shehorn was a very fair person and would not interfere with any of her (Elliott's) rights (R. A. 31); that on the day after such conversation she (Elliott) joined the International (B. A.

†Picking out an isolated part of Elliott's testimony (B. A. 57-58) and ignoring the part above stated, the Board found (B. A. 347) that "Baker • • • threatened to take (Elliott) before the Labor Board. Elliott replied that they had not been talking about the Union, to which Baker then said, 'Well, we better not catch you talking it.'"

56), and that while riding home with Shehorn in January, 1941, Shehorn told her that Manager Leary had instructed "us" (the supervisory employees) that they were not to discuss union matters with any employee (R. A. 34).

The only other statements attributed to Baker were statements which Arlene Potts testified Baker made on the night of December 27, 1940. Potts' testimony with respect thereto was as follows:

On the night of December 27, 1940, Potts and three other members of the International were sitting in an automobile which was parked in front of the City Hall where The Better Union was holding its organizational meeting (B. A. 43). They saw Baker passing by and called him over to their car (R. A. 25). They asked Baker if he was going to the meeting, and, if so, if they could go with him. Baker replied that he was not going to the meeting, but was on his way to the corner store to buy a magazine (B. A. 43). There then ensued a casual conversation with Baker which they prompted (R. A. 25-26). All statements made by Baker were in answer to questions that they brought up (R. A. 26). Potts and her companions brought up the Union question and Baker promptly protested against engaging in any discussion "about the union" (B. A. 43, 49; R. A. 26). In the course of answering questions asked by them Baker said that there was no law which could keep the Company from moving the factory if it so desired (B. A. 43); he mentioned that some plant at Flora (Illinois) had moved on account of Union activities (R. A. 43), but stated that the petitioner would not move its plant on account of Union activities (R. A. 26, B. A. 49).

Manager Leary testified that he warned Baker and the other employees against any interference with the organizational rights of the employees (B. A. 271, 273); that he questioned Baker concerning rumors that Baker had made some statements on the Union question, and Baker denied having done so (B. A. 279). There was no evidence that

any of the statements attributed to Baker or the statement attributed to Emma Sheehorn were ever reported to anyone by the persons to whom they were made or that any member or members of The Better Union ever had any knowledge of the making of any of such statements.

About December 4, 1940, the "joining fronts" department was overmanned and there was a shortage of work in that department (B. A. 37, 252-253; R. A. 17-18, 96). Thereupon, the petitioner laid off Mina Hale and Dora Sanders, both of whom worked in that department (R. A. 18-19; B. A. 140). Dora Sanders was not a member of the International (R. A. 80), and Mina Hale was a member. There was no evidence that the petitioner knew that Hale was a member of the International. Through some confusion with respect to finishing some bundles of work, Sanders came back on two following days (B. A. 253, 261). Neither Sanders nor Hale have been returned to work (B. A. 263), Hale's machine is still unused (R. A. 91), and no new employees have been employed in that department (R. A. 205).

Two members of International Ladies' Garment Workers Union (B. A. 164; R. A. 92), Helen Harrelson and Paula Sheehorn, have since been hired in another department. The Board found that the petitioner, "by discharging Hale and refusing to reinstate her, discriminated in regard to the hire and tenure of her employment, thereby discouraging membership in the Union * * *" (B. A. 348-355). The court below sustained such finding (A. P. 326).

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

I.

In sustaining the Board's finding and conclusion that it was the petitioner's duty under the Act to "restrain" the attendance at meetings of The Better Union by foremen and foreladies (whose attendance at such meetings constituted their sole union activity and was not found to be other than of their own volition), and that said employees, by continuing "unchecked" to attend such meetings "continued thereby to throw (the employer's) support to that organization," the Circuit Court of Appeals for the Seventh Circuit has

(a) decided an important question respecting the union rights of supervisory employees under the National Labor Relations Act and the employer's duties and obligations with reference thereto, which question has not been, but should be, settled by this Court; and,

(b) rendered a decision in conflict with the decisions on the same matter by the Circuit Courts of Appeals for the Second Circuit and the Eighth Circuit, respectively, and which are to the effect that a foreman is an 'employee' within the meaning of the Act and entitled to its protection against discrimination and interference by the employer. Said decisions are:

National Labor Relations Board v. Luxuray, Inc., 123 F. (2d) 106, 108 (C. C. A. 2);

National Labor Relations Board v. Skinner & Kennedy Stationery Company, 113 F. (2d) 667, 670, 671 (C. C. A. 8).

II.

The decision and order of said Circuit Court of Appeals that petitioner post notices stating that its employees are free to become or remain members of the International, and that the petitioner will not discriminate against any em-

ployee because of membership or activity "in that organization," but which fail to state and inform the employees that they are free to join or organize any union they choose without being limited to the International, is in conflict with the decisions on the same matter by the Circuit Courts of Appeals for the Second Circuit, the Third Circuit, the Sixth Circuit and the Eighth Circuit, respectively, and which are to the effect that good faith requires that an employee's freedom to join or form any union he may choose should be clearly stated in any notice posted and not left to inference. Said decisions of said Circuit Courts of Appeals are:

Westinghouse Electric & Mfg. Co. v. National Labor Relations Board, 112 F. (2d) 657, 661 (C. C. A. 2), affirmed per Curiam in 312 U. S. 660;
National Labor Relations Board v. Baldwin Locomotive Works, 128 F. (2d) 39, 51 (C. C. A. 3);
National Labor Relations Board v. American Rolling Mills Co., 126 F. (2d) 38, 42 (C. C. A. 6);
Cudahy Packing Co. v. National Labor Relations Board, 102 F. (2d) 745, 753 (C. C. A. 8).

III.

In granting and making a blanket injunctive order against petitioner upon the limited findings of unfair labor practices in this case, and in view of the lack of anti-union history of petitioner, the neutrality of the petitioner's president and the fact that Baker's employment had been terminated prior to the hearing—the said Circuit Court of Appeals has enjoined petitioner from committing any act in violation of the National Labor Relations Act, however unrelated it may be to those found and in the absence of any danger of their commission in the future, and has decided a federal question in a way probably in conflict with the applicable decision of this Court in

National Labor Relations Board v. Express Publishing Co., 312 U. S. 426, 433-437.

IV.

The said Circuit Court of Appeals has misconstrued the rule and principle announced by this Court in National Labor Relations Board v. Link-Belt Company, 311 U. S. 584, 599, with the result that the statements of Baker were not considered by said Circuit Court of Appeals in their setting and background.

V.

The Board's findings that petitioner has engaged in unfair labor practices within the meaning of Section 8 (1), (2) and (3) of the Act are not supported by substantial evidence and the Board's order is not supported by the record.

VI.

The official opinion of a member of a United States Circuit Court of Appeals that the Board's decision is one such as is "calculated to bring the National Labor Relations Act into disrepute" raises a question of high importance which ought to be decided by this Court.

National Labor Relations Board v. Waterman Steamship Corporation, 309 U. S. 206, 208-209.

PRAYER.

For the purpose of correcting the errors complained of and for as much as petitioner is aggrieved by the said decision and decree of the Circuit Court of Appeals for the Seventh Circuit, and to the end that the rights of the petitioner may be determined in accordance with the law, your petitioner respectfully prays that a writ of certiorari be issued under the seal of this Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding it to certify and send to this Court on a day certain, to be therein designated, a full and complete tran-

script of the records and proceedings of the said Circuit Court of Appeals in the within-described cause of "National Labor Relations Board, Petitioner, v. Aintree Corporation, Respondent, Cause No. 8028," to the end that the judgment and decision of said Circuit Court of Appeals in said cause may be reviewed by this Court as provided by law, and that your petitioner may have such other relief as to this Court may seem appropriate, and that the judgment and decision of the said Circuit Court of Appeals may be reviewed by this Honorable Court.

HYMAN G. STEIN,
Attorney for Aintree Corporation,
Petitioner.